

HOUSE BILL No. 1065

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-14-3; IC 34-6-2; IC 34-28-7; IC 34-30-20.5; IC 35-47-11.

Synopsis: Various provisions concerning firearms. Prohibits the state, a political subdivision, or any other person from prohibiting or restricting the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during a declared disaster emergency, energy emergency, or local disaster emergency. Repeals provisions that allow certain political subdivisions to adopt emergency ordinances to regulate firearms if a local disaster emergency has been declared. Prohibits a person, including an individual, a corporation, and a governmental entity, from adopting or enforcing a policy or rule that prohibits or has the effect of prohibiting an individual from legally possessing a firearm that is locked in the individual's vehicle while the vehicle is in or on the person's property. Excepts possession of a firearm: (1) on school property, on property used by a school for a school function, or on a school bus; (2) on certain child care and shelter facility property; (3) on penal facility property; (4) in violation of federal law; and (5) on property belonging to an approved postsecondary educational institution. Provides that a person who, in compliance with the prohibition, does not adopt or enforce such a policy or rule is not liable for resulting injury or damage. Authorizes a civil action for damages, costs, attorney's fees, and injunctive relief to remedy a violation. Deletes an outdated reference.

Effective: July 1, 2010.

Bischoff

January 5, 2010, read first time and referred to Committee on Natural Resources.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1065

A BILL FOR AN ACT to amend the Indiana Code concerning firearms.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-14-3-12, AS AMENDED BY P.L.1-2009,
2 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 12. (a) The governor shall declare a disaster
4 emergency by executive order or proclamation if the governor
5 determines that a disaster has occurred or that the occurrence or the
6 threat of a disaster is imminent. The state of disaster emergency
7 continues until the governor:

8 (1) determines that the threat or danger has passed or the disaster
9 has been dealt with to the extent that emergency conditions no
10 longer exist; and

11 (2) terminates the state of disaster emergency by executive order
12 or proclamation.

13 A state of disaster emergency may not continue for longer than thirty
14 (30) days unless the state of disaster emergency is renewed by the
15 governor. The general assembly, by concurrent resolution, may
16 terminate a state of disaster emergency at any time. If the general
17 assembly terminates a state of disaster emergency under this



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subsection, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought the disaster about or that make possible termination of the state of disaster emergency. An executive order or proclamation under this subsection shall be disseminated promptly by means calculated to bring the order's or proclamation's contents to the attention of the general public. Unless the circumstances attendant upon the disaster prevent or impede, an executive order or proclamation shall be promptly filed with the secretary of state and with the clerk of the city or town affected or with the clerk of the circuit court.

(b) An executive order or proclamation of a state of disaster emergency:

(1) activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the affected political subdivision or area; and

(2) is authority for:

(A) deployment and use of any forces to which the plan or plans apply; and

(B) use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or under any other law relating to disaster emergencies.

(c) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations. This section does not restrict the governor's authority to delegate or assign command authority by orders issued at the time of the disaster emergency.

(d) In addition to the governor's other powers, the governor may do the following while the state of emergency exists:

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency.

(2) Use all available resources of the state government and of each political subdivision of the state reasonably necessary to cope with the disaster emergency.

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(3) Transfer the direction, personnel, or functions of state departments and agencies or units for performing or facilitating emergency services.

(4) Subject to any applicable requirements for compensation under section 31 of this chapter, commandeer or use any private property if the governor finds this action necessary to cope with the disaster emergency.

(5) Assist in the evacuation of all or part of the population from any stricken or threatened area in Indiana if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation.

(7) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in the area.

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, ~~firearms~~, explosives, and combustibles.

(9) Make provision for the availability and use of temporary emergency housing.

(10) Allow persons who:

(A) are registered as volunteer health practitioners by an approved registration system under IC 10-14-3.5; or

(B) hold a license to practice:

(i) medicine;

(ii) dentistry;

(iii) pharmacy;

(iv) nursing;

(v) engineering;

(vi) veterinary medicine;

(vii) mortuary service; and

(viii) similar other professions as may be specified by the governor;

to practice their respective profession in Indiana during the period of the state of emergency if the state in which a person's license **or registration** was issued has a mutual aid compact for emergency management with Indiana.

(11) Give specific authority to allocate drugs, foodstuffs, and other essential materials and services.

SECTION 2. IC 10-14-3-33.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 33.5. The state, a political**

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subdivision, or any other person may not prohibit or restrict the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during:

- (1) a disaster emergency;
- (2) an energy emergency; or
- (3) a local disaster emergency;

declared under this chapter.

SECTION 3. IC 34-6-2-46.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 46.7. "Firearm", for purposes of **IC 34-28-7** and IC 34-30-20, has the meaning set forth in IC 35-47-1-5.

SECTION 4. IC 34-6-2-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 49. (a) "Governmental entity", for purposes of section 91 of this chapter, IC 34-13-2, IC 34-13-3, and IC 34-13-4, means the state or a political subdivision of the state.

(b) "Governmental entity", for purposes of section 103(j) of this chapter, means the state or a political subdivision of the state.

SECTION 5. IC 34-6-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

(b) "Person", for purposes of IC 34-24-4, means:

- (1) an individual;
- (2) a governmental entity;
- (3) a corporation;
- (4) a firm;
- (5) a trust;
- (6) a partnership; or
- (7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

(c) "Person", for purposes of section 44.8 of this chapter, means an adult or a minor.

(d) "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

(e) "Person", for purposes of IC 34-30-5, means any of the following:

- (1) An individual.
- (2) A corporation.
- (3) A partnership.
- (4) An unincorporated association.
- (5) The state (as defined in IC 34-6-2-140).

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(6) A political subdivision (as defined in IC 34-6-2-110).

(7) Any other entity recognized by law.

(f) "Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

(g) "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

(h) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

(i) "Person", for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).

(2) A volunteer fire department (as defined in IC 36-8-12-2).

(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.

(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department.

(5) ~~After March 31, 2002,~~ A corporation, a limited liability company, a partnership, an unincorporated association, or any other entity recognized by law.

(j) "Person", for purposes of IC 34-28-7, means:

(1) an individual;

(2) a governmental entity;

(3) a corporation;

(4) a firm;

(5) a trust;

(6) a partnership; or

(7) an incorporated or unincorporated association that exists

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under or is authorized by the laws of this state, another state, or a foreign country.

SECTION 6. IC 34-6-2-140 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 140. "State":

(1) for purposes of **section 49(b) of this chapter and IC 34-13-3**, means Indiana and its state agencies; and

(2) for purposes of sections 48.5 and 71.7 of this chapter and IC 34-26-5, has the meaning set forth in IC 1-1-4-5.

SECTION 7. IC 34-28-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 7. Possession of Firearms in Locked Vehicles

Sec. 1. This chapter applies only to possession of a firearm by an individual who may possess the firearm legally.

Sec. 2. (a) Notwithstanding any other law and except as provided in subsection (b), a person may not adopt or enforce an ordinance, a resolution, a policy, or a rule that:

(1) prohibits; or

(2) has the effect of prohibiting;

an individual from possessing a firearm that is locked in the individual's vehicle.

(b) Subsection (a) does not prohibit the adoption or enforcement of an ordinance, a resolution, a policy, or a rule that prohibits or has the effect of prohibiting an individual from possessing a firearm:

(1) in or on school property, in or on property that is being used by a school for a school function, or on a school bus in violation of IC 20-33-8-16 or IC 35-47-9-2;

(2) on the property of:

(A) a child caring institution;

(B) an emergency shelter care child caring institution;

(C) a private secure facility;

(D) a group home; or

(E) an emergency shelter care group home;

in violation of 465 IAC 2-9-80, 465 IAC 2-10-79, 465 IAC 2-11-80, 465 IAC 2-12-78, or 465 IAC 2-13-77;

(3) on the property of a penal facility (as defined in IC 35-41-1-21);

(4) in violation of federal law; or

(5) in or on property belonging to an approved postsecondary educational institution (as defined in IC 21-7-13-6(b)).

Sec. 3. (a) An individual who believes that a violation of section

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2 of this chapter has occurred may bring a civil action against the person who is alleged to have violated section 2 of this chapter, other than a person set forth in IC 34-6-2-103(j)(2).

(b) If a person is found by a court, in an action brought under subsection (a), to have violated section 2 of this chapter, the court may do the following:

(1) Award:

(A) actual damages; and

(B) court costs and attorney's fees;

to the prevailing individual.

(2) Enjoin further violations of this chapter.

Sec. 4. This chapter does not limit a person's rights or remedies under any other state or federal law.

Sec. 5. A person is not liable for any injury or damage resulting from the person's compliance with section 2 of this chapter.

SECTION 8. IC 34-30-20.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 20.5. Immunity for Complying With Law Prohibiting Adoption or Enforcement of Policy Prohibiting Possession of Firearms in Locked Vehicles

Sec. 1. A person who complies with IC 34-28-7-2 is immune from liability in accordance with IC 34-28-7-5.

SECTION 9. IC 35-47-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) ~~Section 2 of This~~ chapter applies to all units (as defined in IC 36-1-2-23). ~~All other sections of this chapter apply to all units other than townships.~~

(b) ~~This chapter applies only if a statute expressly grants a legislative body the authority to adopt an emergency ordinance under this chapter.~~

~~(c)~~ (b) This chapter does not affect the validity of an ordinance adopted before, and in effect on, January 1, 1994.

SECTION 10. IC 35-47-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. Notwithstanding IC 36-1-3, a unit may not regulate in any manner the ownership, possession, sale, transfer, or transportation of firearms (as defined in IC 35-47-1-5) or ammunition except as follows:

(1) This chapter does not apply to land, buildings, or other real property owned or administered by a unit, except highways (as defined in IC 8-23-1-23) or public highways (as defined in IC 8-2.1-17-14).

(2) Notwithstanding the limitation in this section, a unit may use

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1 the unit's planning and zoning powers under IC 36-7-4 to prohibit
2 the sale of firearms within two hundred (200) feet of a school by
3 a person having a business that did not sell firearms within two
4 hundred (200) feet of a school before April 1, 1994.

5 ~~(3) Notwithstanding the limitation in this section, a legislative~~
6 ~~body of a unit other than a township may adopt an emergency~~
7 ~~ordinance or a unit other than a township may take other action~~
8 ~~allowed under section 6 of this chapter to regulate the sale of~~
9 ~~firearms anywhere within the unit for a period of not more than~~
10 ~~seventy-two (72) hours after the regulatory action takes effect.~~

11 SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE
12 JULY 1, 2010]: IC 35-47-11-3; IC 35-47-11-4; IC 35-47-11-5;
13 IC 35-47-11-6.

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